Civil Writ Petition No.168/1992
Karan Mal Jain Vs. State & Ors

Date of Order ::: 09/12/05

Hon'ble Mr. Justice Ajay Rastogi

Mr. Prahlad Singh, for petitioner,
Mr. J.K.Agrawal, Addl.Govt.Adv., for State

Instant petition has been filed seeking grant of selection scale of Rs.520-925 with effect from 01/01/85 instead of 01/08/86 as made effective by respondents vide order dt.12/08/91 (Ann.6).

Facts, in brief, relevant for examining controversy, are that petitioner joined service as Assistant Teacher Gr.III on 13/12/58 and seniority list of district Jhalawar was issued on 10/10/66 wherein his name finds place at S.No.697. State Govt. vide order No.F.17(5)FD(Gr2)/84 dt.23/01/85 took decision to grant selection scale to those Government employees, who have been facing stagnation and not been able to get promotion in next higher grade even after lapse of 15-20 years of their regular service. However, there was a condition laid down in the decision of State Government, supra, that number of posts of selection scale will be 10% of each category of post as on 01/04/1984 including temporary posts under a particular appointing authority, and those who completed 15 years service after their regular appointment, they are to be considered for selection scale strictly on seniority subject to rejection of unfit persons. Those, who were similarly situated and juniors to petitioner were granted selection scale vide order dt.19/12/87 (Ann.2) – Col.2 whereof shows seniority position of Teachers Gr.III of district Jhalawar and further demonstrates that persons junior

to petitioner are shown from S.No.84 onwards. Immediately when it came to his notice that he has been left out, he made representation. Realising the mistake, respondents issued corrigendum by putting his name at S.No.85 just above the name of one Tirathram vide order dt.12/08/91 (Ann.5) but vide another order of same date (Ann.6) granted him selection scale of pay in 520-925 with effect from 01/08/86,whereas those who were junior to him were fixed from 01/01/85. Hence this petition.

Counsel for petitioner contends that once this fact remains undisputed that juniors to petitioner were granted selection scale from 01/01/85, there was no justification to deny the petitioner scale in question from 01/01/85 and grant of such scale from subsequent date i.e. 01/08/86 is arbitrary and petitioner is entitled to selection scale in question from the date his juniors were granted viz.01/01/85.

Respondents have filed reply to writ petition inter-alia averring that after this fact came to their notice, he too was granted requisite scale from 01/08/86 because he, himself, submitted application for grant of selection scale in view of one vacancy having fallen on account of death of one Ratansingh; and therefore, once he has accepted selection scale from 01/08/86, he cannot now be permitted to question it by way of instant petition.

I have considered rival contentions made by counsel for both the parties and with their assistance, perused the material on record. This fact remains undisputed that petitioner was senior to those who were granted selection scale No.9 from

01/01/85 vide order dt.19/12/87(Ann.2) and after he raised his grievance against an error and mistake being committed by respondents, which was admittedly rectified vide order dt.12/08/91 (Ann.5) and granting him selection scale vide order dt.12/08/91 (Ann.6) but from later date, for which only justification put forward by respondents is that petitioner made application and accepted grant of selection scale from subsequent date, therefore is not entitled to scale in question from former date. In my considered opinion, such a justification of respondents is without any substance. Once petitioner has been left out from consideration in terms of Govt. decision dt.23/01/85 (supra), it could not have been defeated merely on the premise that he, himself, has submitted application and accepted scale in question from later date. Once the Government, itself, decided to grant of selection scale from the date of his entitlement and eligibility as per order dt.23/01/85 (supra), in my opinion, respondents were under legal obligation to grant selection scale to petitioner atleast from the date his juniors were granted. This inaction of respondents granting scale in question from later date and declining him from former date when his juniors were granted, is apparently erroneous in law warranting exercise of extraordinary jurisdiction of this Court.

Consequently, this writ petition is allowed. Respondents are directed to grant and fix the petitioner in selection scale No.9 of Rs.520-925/- from 01/01/85; and after his due fixation from 01/01/85 as directed supra, alongwith consequential benefits, arrears be computed and paid to him

alongwith interest @6% per annum from the date of its accrual till actual payment. All exercise to comply with directions, supra, be made within three months. No costs.

(Ajay Rastogi), J.

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